

Stephen C. Smith, WSBA No. 15414  
HAWLEY TROXELL ENNIS & HAWLEY LLP  
877 Main Street, Suite 1000  
P.O. Box 1617  
Boise, ID 83701-1617  
Telephone: (208) 344-6000  
Facsimile: (208) 342-3829  
Email: ssmith@hawleytroxell.com

Attorneys for Appellant

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

IN RE:

STEPHEN D. CRAMER,  
Lawyer (Bar No. 9085).

CASE NO. 200,674-4  
Proceeding No. 07#00056  
PETITIONER'S REPLY  
BRIEF

COMES NOW Appellant Stephen D. Cramer, by and through his  
counsel of record, Hawley Troxell Ennis & Hawley LLP, and files  
Petitioner's Reply Brief.

RECEIVED  
SUPREME COURT  
STATE OF WASHINGTON  
2009 JUN 11 A 10:10  
BY RONALD R. CLARK  
CLERK

ORIGINAL

FILED AS  
ATTACHMENT TO EMAIL

PETITIONER'S BRIEF

## I.

### INTRODUCTION

As set forth in Petitioner Stephen D Cramer's ("Cramer") opening brief, the hearing officer incorrectly concluded that Cramer's activities violated Rules of Professional Conduct ("RPC") 8.4(b) and 8.4(c). The hearing officer further incorrectly concluded that the proper sanction for Cramer's activities is disbarment. In the Washington State Bar Association's ("WSBA") answering brief, the WSBA overstates the hearing officer's findings of fact. Based on the findings of facts and the underlying activities of Cramer, disbarment is not the presumptive, or appropriate, sanction.

## II.

### ARGUMENT

**A. The Disciplinary Board incorrectly found that Cramer violated the Rules of Professional Conduct 8.4(b) and 8.4(c)**

Cramer's appeal is based on the hearing officer's conclusions of law, which this Court reviews de novo. *In re Disciplinary Proceeding Against Dynan*, 152 Wn.2d 601, 601 (Wash. 2004). Cramer's appeal is also based on the hearing officer's recommended sanction.

The Hearing Officer, whose findings were adopted by the Disciplinary Board (hereafter collectively, the "Board"), found that

Cramer violated RCW 82.32.290(1) and RCW 82.32.290(2) by continuing to practice law after the certificate of registration for Stephen D. Cramer LLC was revoked. Based on these violations, the Board found that Cramer violated Rules of Professional Conduct 8.4(b), 8.4(c), and 8.4(i).

Cramer has admitted that his actions violated RPC 8.4(i). However, Cramer did not violate RPC 8.4(b) and 8.4(c) because his conduct was not the type of conduct covered by those provisions of the Rules of Professional Conduct.

In its discussion of RPC 8.4(b), the Association argues that there is no question that a nexus exists between Cramer's conduct and the practice of law. However, the Association is focusing on the wrong type of nexus. The goal of RPC 8.4(b) is to protect the "public from incompetent practitioners." *In re Discipline of Curran*, 115 Wn. 2d 747, 768, 801 P.2d 962 (1990). There must be a relationship between the attorney's conduct and the unfitness to practice law, such as witness tampering, misappropriation of law firm's funds, or theft. *Id.* at 766.

The Board erroneously held that Cramer violated 8.4(b). Based on his motives to continue his practice of law, Cramer's actions did not reflect badly on his fitness to practice law. He did not tamper with witnesses or steal. Cramer's failure to obtain all of the proper registrations for a new entity did not reflect poorly on his ability to represent his clients.

Rather, Cramer's ability to continue practicing law helped rather than harmed his clients.

The Association's argument that Cramer was required to withdraw if representing a client would violate a RPC under RPC 1.16 is misplaced. Cramer did not violate RPC 8.4(b) through his actions, so there was no need to withdraw. Further, the Board did not find that Cramer should have withdrawn or that he violated RPC 1.16.

When evaluating a potential violation of 8.4(c), the Court evaluates whether the attorney lied. *In re Discipline of Dynan*, 152 Wn.2d 601, 616, 98 P.3d 444 (2004). "[T]he court must decide 'whether the attorney lied. No ethical duty could be plainer.'" *In re Discipline of Dynan*, 152 Wn.2d 601, 616, 98 P.3d 444 (2004).

Cramer did violate the rules of law, but his actions did not rise to the level of being dishonest, fraudulent, deceitful, or misrepresentative. As set forth in *Dynan*, to be sanctioned under Rule 8.4(c), Cramer must have lied about his actions. Contrary to the Association's assertion related to Cramer's statements regarding his receipt of the letter, the credibility finding related to the letter was not incorporated into the 8.4(c) finding, and it is not sufficient to constitute an 8.4(c) violation. As for Cramer's other actions, they did not involve dishonesty.

In addition, the Association's arguments related to the corporate form and the legislative intent of the tax laws are inapposite. Cramer did not evade his tax liabilities, but rather continued his law practice to pay off those liabilities. As a result, the Board's conclusion that Cramer violated RPC 8.4(c) was erroneous

**B. The Disciplinary Board incorrectly found that Cramer's actions warranted disbarment.**

The Board erred when it found that Cramer should be disbarred based on his actions. Assuming that Cramer did violate the Rules of Professional Conduct, the sanction of disbarment is too severe for Cramer's actions.

**1. Presumptive Sanctions**

As conceded in the Association's Answering Brief, Washington applies The American Bar Association's Standard for Imposing Sanctions. *In re Disciplinary Proceeding Against Vanderbeek*, 153 Wn.2d 64, 89 (Wash. 2004). Under those standards, the Board must have considered "(1) the ethical duties violated, (2) the lawyer's mental state, and (3) the actual or potential injury caused by the lawyer's conduct." *In re Disciplinary Proceeding Against Trejo*, 185 P.3d 1160, 1170 (2008). After those considerations, the court evaluates whether any aggravating or mitigating circumstances exist. *Id.*

As the Association concedes, RPC 8.4(i) does not have a counterpart in the ABA rules, so the ABA Standards do not provide a presumptive sanction. When addressing this RPC, this Court has held that when a violation of 8.4(i) is not directly related to the practice of law, the presumptive sanction should be reprimand. *Disciplinary Proceeding Against Perez-Pena*, 163 P.3d 408, 414-15 (Wash. 2007). And even if the actions were related to the practice of law, only a suspension would be warranted. *Id.* As a result, this suspension is the highest sanction that should be imposed.

In this case, disbarment is not the presumptive sanction. The Association's claims of "subterfuge" were not found by the Board nor was there any finding, nor claim, that Cramer used his knowledge of the law for dishonest purposes. As set forth in Cramer's opening brief and above, Cramer's conduct did not involve dishonesty, fraud, deceit, or misrepresentation. And even if his actions were intentional and involved those factors, they are not severe enough to fall within the parameters of ABA Standard 5.11(b). Simply put, the sanction of disbarment is too severe for Cramer's actions.

## **2. Aggravating and Mitigating Factors**

The Board's application of aggravating factors was incorrect in this case. The reliance on prior offenses was misplaced because those

prior offenses were so remote. And even if the Board decided to apply the aggravating factor of prior offenses, it also should have mitigated that application to the extent that two of the prior offenses were remote. *See* ABA Standard 9.3.

As another mitigating factor, Cramer also had an absence of dishonest or selfish motive. Cramer did not attempt to hide the fact that he was forming another entity and his motives were based on continuing his practice for the sake of his clients and to pay off the tax warrants, which he was eventually able to do.

Finally, Cramer made a timely good faith effort to pay off the tax liabilities. That should be a mitigating factor. *See* ABA Standard 9.3. As set forth in the dissent, this should be treated as a mitigating rather than aggravating factor because it should be used to encourage the payment of tax warrants. The whole purpose of Cramer's actions was to continue the practice of law to pay off the taxes. The dissent properly determined that a suspension is a more appropriate sanction than disbarment.

### **3. Noble Factors**

When determining whether a sanction is proper, the court can consider two factors in addition to the presumptive sanction and the relevant aggravating and mitigating factors. *In re Disciplinary Proceeding Against Trejo*, 185 P 3d at 1176-77. Those factors are "(1) proportionality

of the sanction to the misconduct and (2) the extent of the agreement among the members of the Disciplinary Board.” *Id.* at 1176. The application of these factors give further support for the fact that Cramer’s sanction was too severe.

The recommendation of a divided Board is entitled to less weight. *Id.* at 1177. Three of the Board members dissented from the decision because they believed the sanction was overly harsh. BF 104. The dissent stated that “[b]y imposing the ultimate sanction on Mr. Cramer, when he did pay back the taxes, it is not possible to treat Mr. Cramer differently than a lawyer who failed to pay the taxes. In this instance, those voting in the minority believe that a three-year suspension would be a more appropriate sanction ”

Further, the sanction of disbarment is not proportional to Cramer’s conduct. In determining the proportional nature of a sanction, it is wholly appropriate to consider the types of cases where the ultimate sanction of disbarment was imposed. The cases involving disbarment involved more egregious conduct and the conduct usually harmed the attorney’s clients—or harmed the public in general. In fact, in addition to the cases cited in Cramer’s opening brief, the case to which the Association cites as being comparable to this case also involves substantial harm to the public. *See In the Matter of Disciplinary Proceedings Against Huddleston*, 137 Wn 2d



560, 974 P.2d 325 (1999). In that case, Huddleston set up a scheme related to magazine subscriptions that was found to have caused injury "to the public including magazine publishers, magazine list brokers, magazine subscribers, and the regulatory agencies." *Id.* at 574.

In contrast to that case and the other cited in Petitioner's opening brief, Cramer's actions were much less severe. Cramer did not harm his clients or the public at large. Cramer's only intent was to continue representing his clients and to pay off the tax warrants. Cramer's actions simply do not warrant the ultimate sanction of disbarment.

### III.

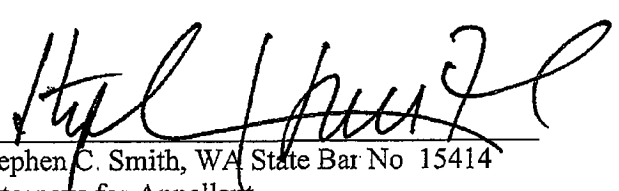
#### CONCLUSION

For the reasons stated above, the Petitioner respectfully requests that this Court find that the correct sanction for his negligence is a reprimand, admonition, or suspension and the Board's sanction of disbarment should be vacated.

RESPECTFULLY SUBMITTED THIS 11<sup>th</sup> day of June, 2009.

HAWLEY TROXELL ENNIS & HAWLEY LLP

By

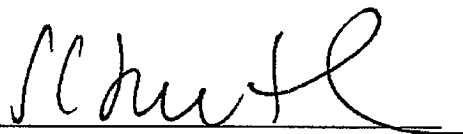
  
Stephen C. Smith, WA State Bar No 15414  
Attorneys for Appellant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11<sup>th</sup> day of June, 2009, I caused to be served a true copy of the foregoing PETITIONER'S REPLY BRIEF by the method indicated below, and addressed to each of the following:

Joanne S. Abelson  
Office of Disciplinary Counsel  
Washington State Bar Association  
1325 Fourth Avenue, Suite 600  
Seattle, WA 98101-2539  
[Attorneys for Appellee]

☐ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☒ Overnight Mail  
☒ E-mail  
☐ Telecopy



Stephen C. Smith

## OFFICE RECEPTIONIST, CLERK

---

**From:** OFFICE RECEPTIONIST, CLERK  
**Sent:** Thursday, June 11, 2009 10:14 AM  
**To:** 'Jennifer Newman'  
**Subject:** RE: In Re: Stephen D. Cramer - Case No. 200,674-4 [DMSMSG1.FID382227]

Received 6-11-09

---

**From:** Jennifer Newman [mailto:jnewman@hawleytroxell.com]  
**Sent:** Thursday, June 11, 2009 10:13 AM  
**To:** OFFICE RECEPTIONIST, CLERK  
**Cc:** Stephen C. Smith; bekycc@wsba.org; joannea@wsba.org; Beth Smethers; John Ashby  
**Subject:** In Re: Stephen D. Cramer - Case No. 200,674-4 [DMSMSG1.FID382227]

To Whom it May Concern:

Attached for filing in the above-referenced matter is the Petitioner's Reply Brief. If you have any questions or any problems with the attachment, please do not hesitate to call.

Thanks,  
Jennifer Newman

---

Jennifer Newman  
*Legal Administrative Assistant to Stephen C. Smith*  
Hawley Troxell Ennis & Hawley LLP  
Direct 208.388.4905  
Fax 208.954.5246  
Email [jnewman@hawleytroxell.com](mailto:jnewman@hawleytroxell.com)  
Web [www.hawleytroxell.com](http://www.hawleytroxell.com)

**HAWLEY TROXELL**  
**Attorneys and Counselors**

 Please consider the environment before printing this email.

This e-mail message from the law firm of Hawley Troxell Ennis & Hawley LLP is intended only for named recipients. It contains information that may be confidential, privileged, attorney work product, or otherwise exempt from disclosure under applicable law. If you have received this message in error, are not a named recipient, or are not the employee or agent responsible for delivering this message to a named recipient, be advised that any review, disclosure, use, dissemination, distribution, or reproduction of this message or its contents is strictly prohibited. Please notify us immediately at 208.344.6000 if you have received this message in error, and delete the message.